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In the Supreme Court of the United States

OCTOBER TERM, 1947

No. 470

WILLIAM CLARK, PETITIONER

v.

THE UNITED STATES

ON PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF CLAIMS

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINION BELOW

The opinion of the Court of Claims (R. 18–32) is reported at 72 F. Supp. 594.

JURISDICTION

The judgment of the Court of Claims was entered on July 7, 1947 (R. 32). By order of this Court dated September 18, 1947, the time for filing a petition for a writ of certiorari was extended to December 6, 1947 (R. 40). The petition for a writ of certiorari was filed on December 5, 1947. The jurisdiction of this Court appears to be invoked under the provisions of Section 3 (b) of the Act of Febuary 13, 1925, as amended.

QUESTIONS PRESENTED

Petitioner, while a federal circuit judge, received a commission in the Army, and, immediately thereafter, tendered his resignation to the President. The President, after intimating that he might refuse the resignation, accepted it two days later. Subsequently, a successor was nominated, was confirmed by the Senate, and appointed "*vice* William Clark, resigned." For approximately three years after the acceptance of his resignation, petitioner served continuously in the armed services, received the pay of his military office, and did not perform the duties or demand or receive the pay of a circuit judge. The questions are:

1. Did the Court of Claims err in holding that petitioner's resignation, its acceptance by the President, and the subsequent appointment and service of his successor, coupled with petitioner's receipt of the Army commission and his service thereunder, with salary, constituted a vacation of his judicial office?

2. Did petitioner, upon his discharge from the Army and his application for restoration to his former judicial office, become entitled to the salary attached thereto, by virtue of the provisions of Section 8 of the Selective Training and Service Act of 1940, and, if so, does the Court of Claims have jurisdiction of a suit against the United States for recovery of that salary?

STATUTES INVOLVED

The pertinent provisions of Section 2 of the Legislative, Executive, and Judicial Appropriation Act, approved July 31, 1894, as amended; of Section 8 of the Selective Training and Service Act of 1940, as amended; and of Section 7 of the Service Extension Act of 1941, as amended, are set forth in the Appendix, *infra*, pp. 22–25.

STATEMENT

This is an action for the recovery of the salary attached to the office of federal circuit judge for the period August 15, 1945 to June 15, 1947, to which petitioner claims to be entitled. The pertinent facts found by the court below may be summarized as follows:

On or about July 5, 1938, petitioner was appointed and assumed his duties as judge of the United States Circuit Court of Appeals for the Third Circuit (R. 7). There he served until 1942, when, after he had applied both to the President and to the Adjutant General for a military appointment, he was, on March 8, 1942, given a temporary appointment as lieutenant colonel in the Army. Thereafter, on March 10, he was directed to report to the Chief of Staff at Washington, D. C. on March 24 for duty (R. 7–8). On March 18, the senior circuit judge, Judge Biggs, wrote the President that petitioner had informed the court "that on next Tuesday [viz. March 24, 1942] he will tender to you his resignation as a

circuit judge" and that the decrease of court business made it unnecessary for "the vacancy left by Judge Clark's resignation [to] be filled at the present time" (R. 8). On March 24, petitioner took the oath of office as a lieutenant colonel in the Army.

On the same day, March 24, 1942, petitioner addressed two letters of resignation to the President (R. 8–10). In both letters, petitioner "submits [his] resignation as Circuit Judge of the United States Circuit Court of Appeals for the Third Circuit;" both are identical, except that only one contains the following paragraph (R. 10):

> It would be hypocritical for me to pretend that I should not like to have you accede to the request of my colleagues that the Congressional precedent be followed and leave of absence be granted. I have been a judge now for eighteen years, most of my adult life. I love the work and to give it up even for a short time is a great sacrifice. Because of that, however, I feel I am too closely concerned to be able to say what should be done. For this reason, I feel I must leave the decision to you.

It does not appear that the President ever saw the letter containing this paragraph; it is clear, however, that the shorter letter did come to his attention (R. 10).

Having secured an appointment, petitioner presented himself to the President on March 24,

1942, and, in the course of the interview, advised him that five judges were unnecessary for the business of the Circuit Court of Appeals for the Third Circuit and that Judge Biggs was going to write him to that effect; the President thereupon stated that, if that were so, he thought petitioner might take a leave of absence instead of resigning (R. 10). This statement was immediately thereafter communicated to the press by the President's secretary, and petitioner then went on to consult with Judge Biggs with respect to the advisability of such a leave (R. 11).[1] At the White House interview, however, the President neither finally accepted nor rejected petitioner's resignation, nor did he finally decide whether petitioner should resign or go on leave of absence, nor did petitioner either withdraw his letters of resignation or state that they would continue to stand for such action as the President chose to take (R. 10–11).

On March 26, 1942, the shorter of the two letters of resignation having in the meantime been referred to the Attorney General for preparation of a reply, a reply was sent to petitioner, as follows (R. 11–12):

> My Dear *[Judge Clark:] Bill:
>
> Since talking to you the other day, I have been advised that under the law your vol-

[1] There is no evidence in the record as to whether petitioner did confer with Judge Biggs, and, if so, what the outcome of that discussion was. But see R. 38–39.

*Struck out in copy.

untary entry into the military service will not permit the retention of your commission as United States Circuit Judge.

Under the circumstances I must regretfully accept your resignation from the judicial post.

With appreciation for your long and able service, and for the patriotism which has moved you to your present choice, I am

Very sincerely yours,

FRANKLIN D. ROOSEVELT.

On April 2, 1942, petitioner wrote the President again (R. 12–13). Questioning the accuracy of such advice as the Attorney General may have rendered, petitioner referred to certain pending legislation which, in his view, would make him "perfectly eligible" to hold both the judicial and military posts; and he suggested that the President's letter of acceptance "be withdrawn pending a clarification of the legal situation" (R. 13).[2]

On April 7, the President telegraphed petitioner that in view of the doubt which the legislation referred to was intended to remove, "I think the wisest thing to do is to let your resignation stand" (*ibid*). Petitioner having left

[2] The legislation to which petitioner referred was H. R. 6766, 77th Cong., 2d sess., a bill introduced on March 11, 1942 (88 Cong. Rec. 2310) "To permit officers of the Army and Navy, commissioned since December 7, 1941, to continue to hold their civil offices while on active duty during the war." The bill was never reported out from committee.

the United States under military orders, received this telegram about six months thereafter, but made no reply (R. 13).[5]

On June 8, 1943, the Senate confirmed the nomination of Gerald McLaughlin to be judge of the United States Circuit Court of Appeals for the Third Circuit, *vice* William Clark, resigned, and after assuming office, Judge McLaughlin received the salary of that office (R. 17). On December 7, 1944, the Congress enacted Public Law 467, 78th Cong., 2d sess. (58 Stat. 796), providing for the appointment of an additional circuit judge for that court, and on October 3, 1945, the Senate confirmed the nomination of John J. O'Connell to that post (*ibid.*). On July 25, 1946, the Senate

[5] On September 28, 1942, petitioner's counsel wrote the Attorney General to the effect that some publicity with respect to the status of the judicial post had been called to petitioner's attention; that petitioner had left the country "under the distinct impression that his resignation had been refused by the President"; that the writer hoped that no change of the status of the post would be made at the time; and that he would appreciate ample notice of any intention to make an additional appointment to the court (R. 14). To this letter, the Attorney General replied that his office was not responsible for the publicity; that he had advised the President that the entry of a judge into the armed forces and acceptance of the salary attached to his commission "automatically vacates his judicial office;" that he understood that the President had written petitioner that under those circumstances he would have to accept his resignation; and that although no appointment to the court had been recommended, additional work being imposed on the circuit judges might require such a recommendation (R. 15).

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confirmed the nomination of Harry E. Kalodner to be judge of the same court (*ibid.*).

Petitioner served continuously in the armed forces from the date of his entry, March 24, 1942, to May 17, 1945, received the pay of his military office during that time, and did not demand or receive the pay of a circuit judge (R. 15–16). On May 17, 1945, petitioner was honorably discharged from the Army, and on August 13, 1945, he sent a formal application to the Attorney General, "under Section 8 of the Selective Service Act," for restoration to his position as judge in the Circuit Court of Appeals for the Third Circuit or to a position of "equal status, rank and pay" (R. 16–17). Respondent has, however, failed and refused to pay petitioner the salary of a circuit judge during the period August 15, 1945 to May 15, 1946 (R. 17).

On these findings of fact, the court below concluded that petitioner was not entitled to recover and dismissed his petition (R. 17–18).

ARGUMENT

1. In the first cause of action stated in the petition below, it is alleged that although petitioner had "exercised none of the functions or duties of a judge * * * and received no part of the salary attached to that office" during the period of his active military service, he continued during that time to be and "still is" a judge and, therefore, was entitled to the salary of that office from

the time he notified the Attorney General of his discharge from the Army and of his readiness to resume his judicial duties (R. 2–3). The lower court's dismissal, so far as that cause of action is concerned, reflects its interpretation of the circumstances surrounding petitioner's resignation. Review of its decision in that respect would, therefore, require a reappraisal of the evidence of record. There is, however, no such variance between record and findings as to warrant a review by this Court.

The court below found that petitioner had submitted his resignation to the President on March 24, 1942, and that this resignation had not been withdrawn and was still pending when it was accepted by the President two days thereafter; and it concluded that certainly when the resultant vacancy was filled by Presidential nomination, confirmed by the Senate, and petitioner's successor was thereupon appointed, if not earlier, petitioner ceased to be entitled to the salary of the judicial office in question.

We do not understand petitioner to deny that he did, in fact, tender unequivocal letters of resignation to the President on March 24, 1942 (R. 9–10); nor does petitioner assert that he ever withdrew these letters of resignation. What petitioner complains of is the court's failure to find that the President, at his interview with petitioner on March 24, 1942, "unequivocally rejected" the resignation "with petitioner's acquiescence and

consent" (Pet. 8), and that the resignation "had been withdrawn as a result of the rejection thereof by the President with the acquiescence and consent of the petitioner" (Pet. 9). But, whatever the legal significance of a Presidential rejection of a resignation from a judicial post (and the court below held there was none), the court was undoubtedly justified in finding that the record disclosed no such rejection and that both petitioner and the President considered the resignation as still pending when, several days after its submission, it was accepted. The evidence to that effect is plentiful.

Petitioner himself testified that when, on March 24, 1942, he informed the President that, in his judgment, the presence of five circuit judges in the Third Circuit was then unnecessary and that Judge Biggs was going to advise the President accordingly, the President replied, "If that is so, I will refuse your resignation" (R. 34). This statement, conditional on its face, conveyed an unmistakable intention to keep the matter of resignation open.

That petitioner so understood the matter is plain from the following circumstances: (1) When he left the White House after the interview on March 24 (as a witness called on his behalf testified), no definite conclusion had been reached; "in deference to the President's wishes," petitioner was to consult with Judge Biggs about the advisability of a leave

of absence (R. 35–36, see R. 11). (2) After the President had made clear acceptance of the resignation, in the letter to petitioner dated March 26, petitioner did not question the President's authority to accept the resignation, but rather, in reply, suggested only that the letter of acceptance "might well be withdrawn pending a clarification of the legal situation" (R. 13). (3) Though petitioner thereafter received a telegram from the President reading "I think the wisest thing to do is to let your resignation stand," he never replied to it (R. 21, 27). (4) When, in reply to a letter of petitioner's counsel complaining of some publicity about the matter (R. 14–15), the Attorney General, on September 29, 1942, replied that petitioner's resignation had been accepted (R. 15) and when, thereafter, in June, 1943, the President nominated and the Senate confirmed Judge McLaughlin "to be judge of the United States Circuit Court of Appeals for the Third Circuit, vice William Clark, resigned" (R. 17), petitioner did not complain; it was only in August 1945, some two years later and three months after his discharge from the Army, that he reopened the matter (R. 27–28).

That the President understood the resignation still to be pending after the interview of March 24, 1942, is obvious not only from his referral of the short form letter of resignation to the Attorney General for reply (R. 11), but, also, of

course, from the nature of all his correspondence with petitioner.

In view of these circumstances, the findings of the court below that petitioner's resignation was accepted when it was still pending and before it was withdrawn, are amply supported by the record; and since the President thereafter nominated and the Senate confirmed his successor, the court was plainly correct in concluding that "After this had been done, and the appointment had been made, if not earlier, [petitioner] was no longer entitled to the salary of the office" (R. 28). In its present posture, therefore, this case does not present the problem which petitioner puts to the Court as an "important and heretofore undecided question"—namely, whether a Federal judge may resign his post without acceptance by the President (Pet. 11–15).

2. Petitioner's conduct in 1942 and thereafter is conclusive of his intention to abandon his judicial post for military service, particularly in the light of the statutory provision, of which petitioner was fully aware, making it unlawful for any person holding an office with a salary of $2,500 or more per year to be appointed to or to hold any other office to which compensation was attached. Section 2 of the Legislative, Executive, and Judicial Appropriation Act, approved July 31, 1894, see *infra*, p. 22. Petitioner appreciated the legal uncertainty as to his status which that

provision created, but he relied for "a clarification of the legal situation" on a bill then pending in Congress, to which reference has already been made, *supra,* note 2 (R. 13). Nevertheless, the possibility that the statute might be construed to prevent the dual office-holding did not deter petitioner from accepting the military commission, and though the bill on which he depended for "clarification" soon failed of passage, he continued serving in the Army for several years thereafter. It is submitted that such conduct justified the finding below that there was voluntary abandonment of his judicial post by petitioner.

The language of Section 2 of the 1894 Act is all-inclusive, and no reason appears for limiting its applicability, as petitioner suggests (Pet. 19), to executive officers.[4] The legislative history of the section suggests no such intention on the part of Congress (S. Rept. 506, 53d Cong., 2d sess.; 26 Cong. Rec. 7423, 7844, 7855–7856). It appears in the appropriation act in an independent section following immediately after that portion of the statute dealing with the judiciary and was obviously intended to have general application. And the Attorney General and this Court have uniformly viewed it as applicable to judicial officers as well as to other Federal officials. *United*

[4] It is noteworthy that in 1942, though he then expressed doubt whether the statute prohibited the dual office-holding involved in this case, petitioner did not insist, as he now does, that the statute was inapplicable to the judiciary (R. 20–21).

States v. *Harsha*, 172 U. S. 567; 22 Op. Atty. Gen. 184; 40 Op. Atty. Gen. No. 99 (Sept. 12, 1945).[5]

In view of all the circumstances, therefore, the court below was warranted in concluding that petitioner must be held to have voluntarily elected to vacate his judicial office. *United States* v. *Harsha, supra;* cf. *Pack* v. *United States*, 41 C. Cls. 414, 427; *Milward* v. *Thatcher*, 2 Term Rep. 81, 100 Eng. Reprint 45; 24 Comp. Dec. 604. This conclusion does not, as petitioner suggests (Pet. 16–17), raise constitutional problems. For, of course, there is no constitutional barrier to vacation of judicial office by the voluntary act of its occupant.[6]

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[5] The mere fact that the section has been included in Title V of the United States Code, entitled "Executive Departments and Government Officers and Employees," does not, of course, require, or indeed permit, a narrower construction than that intended by the Congress which enacted the legislation. See Act of June 30, 1926, c. 712, U. S. C. preceding Title I; Lee and Beaman, *Legal Status of the New Federal Code*, 12 Am. Bar. Assn. Journ. (1926) 833, 835–837.

[6] Petitioner's contention (see Pet. 19–20) that the 1894 statute was, in any event, suspended, so far as petitioner was concerned, by Section 16 of the Selective Training and Service Act of 1940 (50 U. S. C. A. 316) is likewise unsupportable. Even were we to assume that petitioner, though a Federal judge, became entitled to "all the reemployment benefits of section 8 of the Selective Training and Service Act of 1940, as amended," by virtue of the Service Extension Act of 1941, which is by no means free from doubt (see *infra*, pp. 15–17), still, the suspension provisions of Section 16 were not thereby made applicable in his case. Moreover, it is by no means clear that there is such inconsistency between Section 2 of the 1894 Act and the provisions of the Selective Training and

3a. Petitioner's second cause of action is based on essentially the same allegations as the first cause, but, in addition, it invokes the reemployment provisions of Section 8 of the Selective Training and Service Act of 1940 (see *infra*, pp. 22–24). Section 8 (b) (A) of the Selective Training and Service Act of 1940, *infra*, p. 23, provides that any person inducted into the land or naval forces under the Act who leaves other than a temporary position "in the employ of the United States Government * * *" shall be restored to such position or to a position of like seniority, status, and pay * * *." Section 7 of the Service Extension Act of 1941, *infra*, pp. 24–25, makes such reemployment benefits available to persons who, subsequent to May 1, 1940, "entered upon active military or naval service in the land or naval forces of the United States * * *." The court below held, nevertheless, that Congress did not intend those benefits to be applicable to federal judges. We submit that that holding is clearly correct.

The congressional intention to take members of the judiciary, as well as others high in Government office, out of the reach of statute seems clear from an examination of Section 5 (c) (1)

Service Act as to require the suspension of the earlier statute, for Section 8 of the latter act does not contemplate a continuous tenure of office by Federal or other employees, but, at the most, only a *restoration* to work after discharge from the Army.

(September 16, 1940, c. 720, § 5 (c) (1), 54 Stat. 888, amended December 20, 1941, c. 602, § 4, 55 Stat. 845; 50 U. S. C. App., Supp. V, 305 (c) (1)):

> The Vice President of the United States, the Governors, and all other State officials chosen by the voters of the entire State, of the several States and Territories, members of the legislative bodies of the United States and of the several States and Territories, judges of the courts of record of the United States and of the several States and Territories and the District of Columbia, shall, while holding such offices, be deferred from training and service under this Act in the land and naval forces of the United States.

The considerations for removing judges from the ambit of the reemployment provisions of Section 8 are certainly as cogent as those for exempting them from the draft.

Notwithstanding petitioner's urgent efforts to escape the fact (see Pet. 21–27, *passim*), there can be no question that a federal judge's resignation of his office, even if solely for purposes of entering the military, creates at least a temporary vacancy in that office; even the compulsory induction of employees was deemed by Congress to work that result. See Section 8 (i), Selective Training and Service Act of 1940, *infra*, p. 24. Article III, Section 1, of the Constitution, fixing the tenure of federal judges "during good Behavior," pre-

cludes the appointment of judges for temporary periods. Congress, however, cannot have contemplated that judicial positions vacated by resignation for service in the armed forces should be left unfilled for the war period and the functioning of the courts thus seriously handicapped, particularly in those judicial districts where Congress has provided for only one district judge.

In the light of these considerations and in the absence of any indication in the legislative history that Congress intended Section 8 to apply to the judiciary, it does not seem too much to say, as the court below did, that if Congress had intended the reemployment provisions to apply to federal judges, "it would have expressed its intention in language sufficiently clear not to be misunderstood" (R. 32).

b. Even if federal judges were to be held entitled to the reemployment benefits of Section 8, it is clear that no judicial remedy for enforcement of such benefits has been provided as to federal employees. That was the very holding in the recent decision of the Circuit Court of Appeals for the First Circuit in *Insular Police Commission* v. *Lopez,* 160 F. 2d 673, which this Court refused to review on a petition for a writ of certiorari. 331 U. S. 855. As the Circuit Court of Appeals said there: "* * * the legislative history of the Selective Training and Service Act is barren of any intimation that the Congress con-

templated any judicial enforcement of the rights conferred as against the Government of the United States or of its territories or possessions." 160 F. 2d at 676.[7]

[7] Early drafts of the selective service bills, which contained no mandatory reemployment provisions, made no provisions for judicial enforcement of reemployment rights. Senate Committee on Military Affairs, Committee Prints (Nos. 1–4) of S. 4164, 76th Cong., 3d sess. When private employers were brought under compulsory reemployment provisions, a combined administrative and judicial enforcement procedure as to such employers was suggested and considered (Committee Prints Nos. 5 and 6 of S. 4164, *supra*), but was ultimately replaced by the present provision permitting resort to the courts for violations of the Act by private employers. 86 Cong. Rec. 10922–10923, 11697–11702. While S. 4164 was before the Senate, the House considered reemployment provisions in S. J. Res. 286, the proposed National Guard Act, where a provision for judicial enforcement of reemployment rights, exclusively applicable to private employers, was inserted (86 Cong. Rec. 10344, 10439) and, with an amendment providing for representation of veterans in such suits by United States Attorneys (86 Cong. Rec. 10443–10444), thereafter passed by both Houses after conference. 86 Cong. Rec. 10763, 10791. The judicial enforcement provisions of S. 4164 was conformed to the similar provision in S. J. Res. 286. 86 Cong. Rec. 10922–10923. That Congress never intended to create legally cognizable rights in government employees, such as petitioner, is further shown by subsequent congressional failure to provide such employees with either administrative or judicial remedies, although such legislation was strongly urged by the United States Civil Service Commission, 61st Annual Report, 1944, p. 6; *Id.*, 62d Annual Report, 1945, p. 3. But cf. *Kephart* v. *United States*, No. 47363, C. Cls., decided December 1, 1947, which seems, in certain aspects, to be inconsistent with the decision herein; the United States is filing a motion for a new trial in the *Kephart* case.

In Section 8,[8] Congress recognized and accorded distinctive treatment to three employment situations: (1) By Section 8 (b) (B), private employers were directed to restore and reemploy veteran employees to their former positions or positions of like seniority, status, and pay unless such restoration was made impossible by a change in the employers' circumstances. If a private employer failed or refused to comply with Section 8 (b) (B), the veteran, by Section 8 (e), was given a remedy in the appropriate federal district court, whereby compliance by the private employer could be enforced. (2) By Section 8 (b) (A), it was provided that if a reemployable veteran had left a non-temporary position with the United States, its territories or possessions, or the District of Columbia, he "shall be restored to such position or to a position of like seniority, status, and pay." However, no provision for judicial enforcement of this direction with respect to government employment was provided. (3) By Section 8 (b) (C), it was declared to be "* * * the sense of the Congress * * *" that states and political subdivisions thereof

[8] The Service Extension Act of 1941, *infra*, pp. 24–25, made the reemployment benefits of Section 8, theretofore available only to persons inducted under the Selective Training and Service Act, applicable also to persons "who, subsequent to May 1, 1940 * * * shall have entered upon active military or naval service in the land or naval forces of the United States * * *."

follow the same policies with regard to the restoration of veterans to their prior positions. Similarly, there, no provision for judicial enforcement was included.

Thus, it is clear on the face of the statute that judicial enforcement of the reemployment privileges provided by Section 8 (a) was granted only in the case of private employment and then only to the federal district courts. The judicial remedy of Section 8 (e) is available only against private employers and is exclusive. Cf. *United States* v. *Babcock,* 250 U. S. 328, 331. Petitioner obviously cannot rely upon that remedy. Nor can a judicial remedy be attached, by implication, to the direction embodied in Section 8 (b) (A). For, it is well settled that no jurisdiction exists to entertain a suit against the sovereign in the absence of express congressional consent. *Mine Safety Appliances Co.* v. *Forrestal,* 326 U. S. 371; *United States* v. *Sherwood,* 312 U. S. 584; *Rock Island &c. Railroad Co.* v. *United States,* 254 U. S. 141; *Schillinger* v. *United States,* 155 U. S. 163; *Munro* v. *United States,* 303 U. S. 36. Here no such consent was granted by Congress. Section 8 (b) (A) is merely directory, a statement of policy to be followed by the executive branches of the Government, and Congress has failed to provide for judicial enforcement thereof, despite repeated recommendations of the Civil Service Commission.[9]

[9] Such hortatory provisions were not new to this last war. Cf. Act of July 28, 1916, c. 261, § 1, 39 Stat. 412, 413, amended

United States Civil Service Commission, 61st Annual Report (1944), pp. 6–7; Id., 62d Annual Report (1945), p. 3. Cf. *Lynch* v. *United States*, 292 U. S. 571, 588; *Keim* v. *United States*, 177 U. S. 290, 296.

CONCLUSION

The decision of the Court of Claims dismissing the petition below raises no questions warranting review by this Court. It is respectfully submitted that the petition for a writ of certiorari should be denied.

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July 2, 1918, c. 117, § 9, 40 Stat. 754, 39 U. S. C. 818, applicable to postal employees; Act of July 11, 1919, c. 9, 41 Stat. 131, 142, applicable to all governmental employees.

APPENDIX

1. Section 2 of the Legislative, Executive, and Judicial Appropriation Act, approved July 31, 1894, as amended (July 31, 1894, c. 174, § 2, 28 Stat. 205; May 31, 1924, c. 214, 43 Stat. 245; July 30, 1937, c. 545, § 6, 50 Stat. 549; June 25, 1938, c. 694, 52 Stat. 1194; 5 U. S. C. 62) reads, in pertinent part, as follows:

> * * * No person who holds an office the salary or annual compensation attached to which amounts to the sum of two thousand five hundred dollars shall be appointed to or hold any other office to which compensation is attached unless specially authorized thereto by law; but this shall not apply to retired officers of the Army, Navy, Marine Corps, or Coast Guard whenever they may be elected to public office or whenever the President shall appoint them to office by and with the advice and consent of the Senate. * * *

2. Section 8 of the Selective Training and Service Act of 1940, as amended (September 16, 1940, c. 720, § 8, 54 Stat. 890; July 28, 1942, c. 529, § 2, 56 Stat. 724; December 8, 1944, c. 548, § 1, 58 Stat. 798; June 29, 1946, c. 522, § 1, 60 Stat. 341; 50 U. S. C. A. App., 308) reads, in pertinent part, as follows:

> (a) Any person inducted into the land or naval forces under this Act for training and service, who, in the judgment of those in authority over him, satisfactorily completes his period of training and service under section 3 (b) shall be entitled to a

certificate to that effect upon the completion of such period of training and service, which shall include a record of any special proficiency or merit attained. * * *

(b) In the case of any such person who, in order to perform such training and service, has left or leaves a position, other than a temporary position, in the employ of any employer and who (1) receives such certificate, (2) is still qualified to perform the duties of such position, and (3) makes application for reemployment within ninety days after he is relieved from such training and service or from hospitalization continuing after discharge for a period of not more than one year—

(A) if such position was in the employ of the United States Government, its Territories or possessions, or the District of Columbia, such person shall be restored to such position or to a position of like seniority, status, and pay;

(B) if such position was in the employ of a private employer, such employer shall restore such person to such position or to a position of like seniority, status, and pay unless the employer's circumstances have so changed as to make it impossible or unreasonable to do so;

(C) if such position was in the employ of any State or political subdivision thereof, it is hereby declared to be the sense of the Congress that such person should be restored to such position or to a position of like seniority, status, and pay.

(c) Any person who is restored to a position in accordance with the provisions of paragraph (A) or (B) of subsection (b) shall be considered as having been on furlough or leave of absence during his period of training and service in the land or naval

forces, shall be so restored without loss of seniority, shall be entitled to participate in insurance or other benefits offered by the employer pursuant to established rules and practices relating to employees on furlough or leave of absence in effect with the employer at the time such person was inducted into such forces, and shall not be discharged from such position without cause within one year after such restoration.

* * * * *

(e) In case any private employer fails or refuses to comply with the provisions of subsection (b) or subsection (c), the district court of the United States for the district in which such private employer maintains a place of business shall have power, upon the filing of a motion, petition, or other appropriate pleading by the person entitled to the benefits of such provisions, to specifically require such employer to comply with such provisions, and, as an incident thereto, to compensate such person for any loss of wages or benefits suffered by reason of such employer's unlawful action. * * *

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(i) It is the expressed policy of the Congress that whenever a vacancy is caused in the employment rolls of any business or industry by reason of induction into the service of the United States of an employee pursuant to the provisions of this Act such vacancy shall not be filled by any person who is a member of the Communist Party or the German-American Bund.

3. Section 7 of the Service Extension Act of 1941, as amended (August 18, 1941, c. 362, 55 Stat.

626; December 8, 1944, c. 548, 58 Stat. 799; August 9, 1946, c. 936, 60 Stat. 971; 50 U. S. C. A. App. 357) reads, in pertinent part, as follows:

> (a) Any person who, subsequent to May 1, 1940, and prior to the termination of the authority conferred by section 2 of this joint resolution, shall have entered upon active military or naval service in the land or naval forces of the United States shall be entitled to all the reemployment benefits of section 8 of the Selective Training and Service Act of 1940, as amended, to the same extent as in the case of persons inducted under said Act: * * *

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